

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2540

IN THE MATTER OF:

Served March 23, 1984

Application of FRANK J. UTLEY,)
Trading as UTLEY'S TRANSPORTATION)
SERVICE, for a Certificate to)
Conduct Special Operations --)
Lorton, Va.)

Case No. AP-84-08

Application of FRANK J. UTLEY,)
Trading as UTLEY'S TRANSPORTATION)
SERVICE, for Temporary Authority to)
Conduct Special Operations --)
Lorton, Va.)

Case No. AP-84-09

By applications filed March 6, 1984, Frank J. Utley, trading as Utley's Transportation Service, seeks both temporary authority and a certificate of public convenience and necessity to transport passengers, in special operations, from the intersection of 11th and G Streets, N.W., Washington, D.C., to Lorton Reformatory, Fairfax County, Va., and return.

Mr. Utley proposes to depart Washington, D.C., at 6, 6:30 and 7 p.m. each weekday and at 9, 9:30 and 10 a.m. each Saturday and Sunday. Vehicles to be used include a 15-passenger van, a 17-passenger and a 24-passenger minibus, and a 40-passenger school bus. The proposed round-trip fare is \$4 a person.

On March 22, 1984, Mr. Utley filed amendments to both applications to provide that, after a vehicle returns to 11th and G Streets, N.W., any passenger may secure "an additional home drop-off service" to any point in the District of Columbia, for payment of an additional \$2 fare. Such service is mentioned with favor in the statements supporting the application for temporary authority, but was not included as part of either application as originally filed.

Mr. Utley states that the Washington Metropolitan Area Transit Authority (Metro) provides the only authorized bus service between Washington and Lorton. Several unauthorized services, including Mr. Utley's, have also been operating between those termini. Mr. Utley ceased operations upon advice that appropriate authorization was required and now seeks proper authority to continue service.

Thirty-two users of Mr. Utley's service wrote letters supporting the application for temporary authority. Generally, these letters express satisfaction with Mr. Utley's service and state that reliability, courtesy and convenience are key elements of that satisfaction. The statements indicate that the Metrobus service operated between Washington and Lorton is incapable of handling the number of persons requiring such transportation, frequently carrying standees. The availability of seats and the willingness of applicant to wait for latecomers are factors frequently mentioned in the supporting statements. The flexibility of three departure times is also cited as a significant convenience.

Under contract with the District of Columbia, Metrobus operates the only authorized service between Washington and Lorton. Until March 15, 1984, Metrobus departed Metro Center at 12th and G Streets, N.W., at 6:35 p.m. on weeknights, leaving Lorton at 9:05 p.m. to return. On Saturdays, Sundays and holidays, Metrobus experienced increased ridership, in response to which it operated a larger, articulated vehicle, and sometimes operated a second trip. These trips departed Washington at 9:30 a.m., leaving Lorton at 12 noon to return. Round-trip Metrobus fares are \$2.50 per adult and \$1.20 per child.

On March 19, 1984, Mr. Thomas M. Downs, District of Columbia City Administrator and Deputy Mayor for Operations, filed a protest in Case No. AP-84-09. The letter states that, "Beginning March 15, 1984 the level of service was effectively doubled with the inclusion of a second articulated bus to provide a total available capacity of approximately two hundred round trip passengers per day." */

Mr. Downs' letter further states that the "District of Columbia strenuously protests the application of Frank J. Utley for temporary authority," that it "has a substantial and significant interest" in the application, that it "is committed to underwriting whatever level of service is necessary to meet the demand," that it "has a paramount obligation to provide convenient and safe transportation" for visitors to Lorton Reformatory, and that this "obligation is not served by authorizing the type of duplicative shuttle service proposed by Mr. Utley."

It is beyond question that the District of Columbia, through its contract with Metro, is the primary provider of service to and from Lorton. When recent circumstances substantially increased the demand for this service, the City responded with celerity, doubling the service. Moreover, the City has expressed its commitment to underwriting whatever level of service is needed to meet what it sees as a paramount obligation. Further, it appears from the City's use of the

*/ Metro operates two sizes of articulated vehicles. The smaller seats about 61, and the larger seats about 69.

word "underwriting," as well as our own knowledge of the situation, that the City deliberately provides the service at less than Metro's cost, making up the shortage of farebox revenues, and thus subsidizing this group of riders by a method philosophically, if not mechanically, consistent with its subsidization of other Metro riders.

Title II, Article XII, Section 4(d)(3) of the Compact provides that the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority where there is an immediate and urgent need for service and no carrier service capable of meeting that need.

The City has not only expressed its commitment, but has backed-up that expression with action. It is impossible on this limited record to find that there is an immediate and urgent need for service or that there is no carrier service capable of meeting the need. Hence, we cannot grant temporary authority.

We will, however, set both of these applications for expedited public hearing. While the City has doubled its service and says it has received no complaints that service is inadequate, there is no information on this record that would quantify the demand and hence no basis for determining that the quantum of service is either adequate or inadequate.

Further, the standards for issuance of a certificate of public convenience and necessity are different from those required for a grant of temporary authority. The Compact, Title II, Article XII, Section 4(b), provides, in pertinent part:

When an application is made under this section for a certificate, . . . the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the transportation covered by the application, if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise such application shall be denied.

The purpose of the hearing will be to develop a record with regard to the standards for both temporary authority and a certificate. The City has timely filed its protest in Case No. AP-84-09. We perceive its interest in Case No. AP-84-08 to be substantially the same, and so we grant it formal party status in both cases without the need of filing any further notice of protest.

We do ask that the City be prepared to provide pertinent ridership/seating capacity data at the hearing with regard to Metrobus contract operations after March 15, through a witness familiar with the operation. However, the applicant is reminded that he bears the primary burden of making his case.

Applicant will be assessed a sum preliminarily estimated to cover the cost of the hearing and will be required to publish notice of this application.

THEREFORE, IT IS ORDERED:

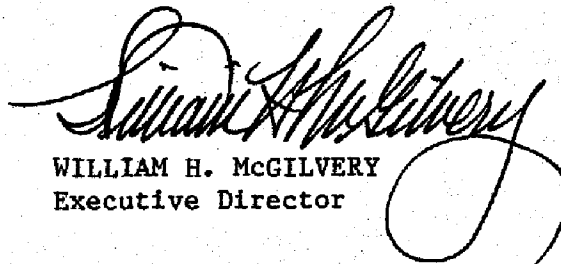
1. That the public hearing in Case Nos. AP-84-08 and AP-84-09 of Frank J. Utley, trading as Utley's Transportation Service, is hereby scheduled to commence Tuesday, April 17, 1984, at 9:30 a.m. in the Hearing Room of the Commission, Room 314, 1625 I Street, N.W., Washington, D.C. 20006.

2. That applicant publish once in a newspaper of general circulation in the Metropolitan District notice of this application and hearing, in the form prescribed by the staff of the Commission, no later than Friday, March 30, 1984, and present at the hearing an affidavit of publication from the selected newspaper.

3. That any person desiring to protest this application shall file a protest in accordance with Commission Rule 14, or any person desiring to be heard on this matter shall so notify the Commission, in writing, no later than Tuesday, April 10, 1984, and shall simultaneously serve a copy of such protest or notice on Mr. Frank J. Utley, 1115 First Terrace, N.W., Washington, D.C. 20001.

4. That applicant is hereby assessed \$500 pursuant to Title II, Article XII, Section 19 of the Compact, and is directed to deliver said amount to the office of the Commission no later than Tuesday, April 10, 1984.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director